IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1349 of 1989

with

CROSS OBJECTION No 56 of 2004

Date of Decision: 22-12-2004

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GUJ STATE ROAD TRANSPORT CORPN

Versus

BALUBHAI RAISING

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Coram:

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether Approved for Reporting?

For Appellant:

For Claimant:

MR RC KAKKAD

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. This Appeal is directed against the award of Motor Accident Claims Tribunal (Main), Junagadh, in Motor

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Whether Reporters of Local Papers may be allowed to see the Judgment?

Accident Claim Petition No.542 of 1984 dated 24-01-1989. The claimant has also filed Cross Objection No.56 of 2004 claiming further compensation of Rs.1,20,000/-.

2. The accident took place on 17-04-1984. The claimant (Balu Ramsing) was driving Rajdoot motorcycle cycle No.GRK 5931 from Kodinar to Veraval with two pillion riders (Babu Bhima and Vijanand Pala). These pillion riders died on the spot, while the claimant, motor cycle driver, sustained injuries. Accident took place when motorcycle and the Bus GRS 7553 owned by ST Corporation collided. Claimant suffered injuries on the chest, right leg, hand, etc. Right leg was fractured besides the ribs. He was taken to hospital at Veraval for treatment. ST Corporation has resisted the claim. It is stated that accident took place, but it did not take place the way it is explained by the claimant. It happened when motorcycle was coming from village Virodar side going towards village Amrapar crossing Veraval-Una Road. While the Bus was moving on the main road at normal speed and sounded horn at the crossing, motorcycle came with full speed and tried to cross the main road. ST Bus driver with a view to avoid accident took the Bus to the right side of the road and applied breaks, but the motorcycle driven at high speed dashed against the Bus and fell in the ditch on the side of the road. The front portion of the Bus was damaged, matter reported to the police. Accident took place due to the rash and negligent driving of the motorcycle by the claimant, who raised an exaggerated claim, therefore, petition deserved to be dismissed. Question fell for consideration was whether accident took place as alleged due to the rash and negligent driving of ST Bus? If so, what compensation the claimant is entitled? Issues were tried and the finding recorded is that accident took place, but claimant was responsible to the extent of 20% and the bus driver 80%. Consequently, compensation of Rs.1,48,798.81ps is assessed. Making deduction of 20%, it came to Rs.1,19,035.65ps., payable with interest @ 12% from the date of application till payment.

3. Learned Counsel for the parties are heard, record perused. So far as taking place of accident is concerned, the finding of the Claims Tribunal is sustainable. The claimant came from left for going to the right side. Meanwhile, the Bus came and the accident took place. It is highway, therefore, number of vehicles are expected, therefore, vigilance and care was required by drivers of vehicles so that accidents are avoided. Similarly, vehicles coming from sideways are also expected to be vigilant while approaching the highways. It seems that motorcycle came from left for going to the right. Instead of waiting on the left side, while approaching the highway it moved forward and the accident took place. The Bus was moving at high speed, therefore, could not stop immediately, as such, skidded 42 meters towards the right side of the road. Therefore, responsibility for the accident has been rightly settled by the Claims Tribunal and the finding is confirmed.

4. Next question is what compensation the claimant is entitled to. Shri Hardik Raval, learned counsel for the appellant, submitted that taking into consideration the evidence, the amount of award be reduced, while Shri Kakkad appearing for the Claimant submits that just compensation has not been assessed, therefore, it deserves to be enhanced. In paragraph 22, the Claims Tribunal has assessed compensation of Rs.1,48,798.81ps. under various heads. The main grievance of the claimant pertains to the amounts under the heads of disability and actual loss. Although, damage to the motorcycle was assessed Rs.7000/- by the Claims Tribunal, but it is not included in the award. From the evidence, it is clear that claimant possesses around 50 bighas of irrigated land. He also possesses tractor not only for cultivation of his lands, but also for hire. He claims income of Rs.57,000/- annually. After the accident, he suffers income loss of Rs.20,000/-. He has to engage driver casually, therefore, income by use of tractor on hire is also lost because of disability in right leg, which is shortened by 3/4". Then, there is grievance about actual loss of income for six months. Taking his income at Rs.2,000/- is not justified, therefore, from this angle, matter has to be considered. Looking to the extent of land, nature thereof, use of tractor for cultivation and hire, income assessed seems to be unjustified, therefore, it should be enhanced. Considering his annual income from agriculture at Rs.57,000 per year, monthly income is taken at Rs.4000, taking loss of future income at 10% due to disability, it comes to Rs.400 per month and by applying multiplier 20, it comes to Rs.96,000 (400x12x20). He has been awarded Rs.48,000/- under this

head by the Tribunal, therefore, enhanced compensation of Rs.48,000 is awarded under the head of disability. Further, after taking his income at Rs.4000/-, actual loss for six months would come to Rs.24,000. Rs.12,000 have been awarded towards actual loss by the Claims Tribunal, which is enhanced to Rs.24,000 plus Rs.7000 towards damage to the motorcycle and the total compensation comes to Rs.67,000 (Rs.48,000+12,000+7,000). Since there is contributory negligence on the part of the claimant, there shall be reduction of 20% (Rs.13,400) in the total compensation.

Consequently, the Appeal is dismissed, while the Cross Objection is allowed. The claimant is held entitled to enhanced compensation of Rs.53,600 (Rs.67,000-13,400) payable with interest @ 12% per annum from the date of application till payment. Compensation pending with the Claims Tribunal be released, balance to be paid within two months.

There shall be no order as to costs.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

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